

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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MONDAY, SEPTEMBER 27, 1999

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of court calendar session.

PRESENT: DAVIS, Acting Presiding Justice
 NICHOLSON, Associate Justice
 KOLKEY, Associate Justice

Bailiff: Conrad.
Calendar called.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, SEPTEMBER 27, 1999 CONTINUED**

2

Crim. THE PEOPLE
No. v.
C029375 FLOYD LOWE

Cause called. Handy Horiye, court appointed counsel argued for Defendant-Appellant. Catherine G. Tennant, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 10:08 court recessed. At 10:10 a.m., court reconvened with the same panel except Associate Justice Callahan in place of Associate Justice Kolkey.

Crim. THE PEOPLE
No. v.
C028443 TODD JOSEPH MILLER

Cause called. Richard F. Antoine argued for Defendant-Appellant. Paul E. O'Connor, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Civil TOBERT CHENEY, JR. a minor, etc et al.
No. v.
C030307 JACK BROWN

Cause called. Mark G. Steidlmayer, of Trezza, Ithurnburn, Steidlmayer, & Ithurnburn argued for Plaintiff-Appellants. Mark D. Norcross, of Moss & Enochian argued for Defendant-Respondent. Cause submitted.

Civil WILLIAM E. BRILL, III
No. v.
C030082 CAPITAL LUMBER COMPANY

Cause called. Kenny N. Giffard argued for Plaintiff-Appellant. Nelson Chan, of Borton, Petrini & Conron argued for Defendant-Respondent. Cause submitted.

MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, SEPTEMBER 27, 1999 CONTINUED

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At 11:10 a.m., court recessed. At 11:14 a.m., court reconvened with Presiding Justice Scotland, Associate Justice Davis, and Associate Justice Callahan.

Civil FORTY NINER SIERRA RESOURCES et al.
No. v.
C028664 NEW MOTOR VEHICLE BOARD
 DEPARTMENT OF MOTOR VEHICLES

Cause called. Richard E. Wilmshurst, argued for Himself in Pro Per as Plaintiff-Appellant Richard E. Wilmshurst. James, Deputy Attorney General argued for Real party in interest-Respondent. Cause submitted.

At 11:40 a.m., court recessed. At 2:00 p.m., the reconvened with the same panel except Associate Justice Kolkey in place of Associate Justice Callahan.

Civil THOMAS DOYLE WHITAKER
No. v.
C030481 JESSE BRAZEAL et al

Cause called. Richard J. Reilley, of Allan Lerch & Associates argued for Plaintiff-Appellant. Karen Halbo, of Shepard & Haven argued for Defendants-Respondents. Cause submitted.

At 2:20 p.m., court recessed. At 2:22 p.m., court reconvened with the same panel except Associate Justice Callahan in place of Associate Justice Kolkey.

Civil ART PULASKI et al.
No. v.
C028525 OCCUPATIONAL SAFETY AND HEALTH
 AMERICAN TRUCKING ASSOCIATES et al
 AMERICAN FEDERATION OF LABOR, etc. et al.

Cause called. Pamela L. Hemminger, of Gibson, Dunn & Crutcher argued for Intervenor-Appellants American Trucking Assn. et al. Timothy G. Laddish, Senior Assistant Attorney General argued for Defendant-Respondent-Appellant OSHA. Scott A. Kronland, of Altshuler, Berzon, Nussbaum, Berzon & Rubin argued for Intervenor-Respondent AFL-CIO. Donald C. Carroll, of Carroll & Scully argued for Plaintiff-Respondents Art Pulaski et al. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, SEPTEMBER 27, 1999 CONTINUED**

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At 3:24 p.m., court recessed. At 3:25 p.m., court reconvened with the same panel except Associate Justice Morrison in place of Associate Justice Davis.

Civil ANTONIOS CHRISOPOULOS
No. v.
C028717 CALIFORNIA HOUSING CORPORATION et al.

John Sargetis argued for Plaintiff-Appellant. Douglas E. Kirkman, of Wagner, Kirkman & Blaine argued for Defendants-Respondent. Cause submitted.

At 4:00 p.m., court recessed. At 4:03 p.m., court reconvened with the Presiding Justice Scotland, Associate Justice Callahan, and Associate Justice Hull.

Civil TIFFANY P.
No. v.
C028167 ALBERTSON'S, INC.

Cause called. Pamela J. Van Haaften, of McMurchie, Weill, Lenahan, Lee & Slater argued for Plaintiff-Appellant. William T. Darden, of Orrick, Herrington & Sutcliffe argued for Defendant-Respondent. Cause submitted.

Court adjourned at 4:33 p.m., until 9:30 a.m., Monday, October 18, 1999.

Juvenile In re AMANDA F., a Person Coming Under the Juvenile Court Law.
No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C033303 v.
 JIMMY R.
 BY THE COURT;

Pursuant to the written request of the appellant, the appeal filed July 28, 1999, is dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 38.)

Dated: September 27, 1999

SCOTLAND, P.J.

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DAVIS, J.

The judgment (order of probation) is affirmed.

NICHOLSON, J.

The sentence is modified as stated in part IV. As modified, the judgment is affirmed. The superior court is directed to amend the abstract of judgment and forward it to the Department of Corrections.

NICHOLSON, J.

The judgment is affirmed.

NICHOLSON, J.

We concur: SIMS, Acting P.J.
 MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, SEPTEMBER 27, 1999 CONTINUED**

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Civil JAY S. WELLS (Not for Publication)

No. v.

C030504 DONNA T. BUDWIN DECUIR

The judgment is affirmed. DeCuir shall recover her costs on appeal.
NICHOLSON, J.

We concur: SCOTLAND, P.J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C030094 LANORIS K. GARDNER-MYLES

The judgment is affirmed.
SCOTLAND, P.J.

We concur: SIMS, J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C031243 PATRICK RAWSON HAYNIE

The judgment is affirmed.
CALLAHAN, J.

We concur: NICHOLSON, Acting P.J.
 MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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TUESDAY, SEPTEMBER 28, 1999

Crim. THE PEOPLE (Not for Publication)
No. v.
C030618 RUSSELL ALAN SMITH

The judgment is affirmed. The trial court is directed to correct the abstract of judgment as stated above and to forward a certified copy to the Department of corrections.

CALLAHAN, J.

We concur: SCOTLAND, P.J.
BLEASE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C031763 SCOTT MICHAEL WARREN

The judgment is affirmed.

HULL, J.

We concur: SCOTLAND, P.J.
SIMS, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C032062 DAVID LEONEL FLORES

The judgment is affirmed.

NICHOLSON, Acting P.J.

We concur: MORRISON, J.
CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029674 KENNETH DEAN MCKAY

The judgment is affirmed.

CALLAHAN, J.

We concur: SCOTLAND, P.J.
BLEASE, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, SEPTEMBER 28, 1999 CONTINUED**

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Civil REBECCA WYNN (Not for Publication)
No. v.
C030368 VILLAGE GREEN CORPORATION

The judgment is affirmed.

HULL, J.

We concur: SCOTLAND, P.J.
RAYE, J.

Civil GARY CERAGIOLI et al. (Not for Publication)
No. v.
C030208 WILLIAM PROCK et al.

The judgment is affirmed.

HULL, J.

We concur: DAVIS, Acting P.J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030671 ESTEVAN MENDOZA-MORALES

CALLAHAN, J.

We concur: SCOTLAND, P.J.
BLEASE, J.

Civil JAKE AND JESS, INC.
No. v.
C026423 SANDERS AND NELSON, INC. et al.
Civil JAKE AND JESS, INC. et al.
No. v.
C027134 SANDERS AND NELSON, INC.

The judgment is affirmed except insofar as it denies Bardfield attorney fees and costs. The matter is remanded to the trial court for a determination of reasonable fees and costs. Bardfield shall recover her costs on appeal.

RAYE, J.

We concur: SIMS, Acting P.J.
MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, SEPTEMBER 29, 1999**

9

Crim. THE PEOPLE
No. v.
C029215 MIKE COWMAN READ
BY THE COURT:

Appellant's petition for rehearing is denied.

Dated: September 29, 1999

DAVIS, Acting P.J.

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MORRISON, J.

DAVIS, J.

SIMS, Acting P.J.

SIMS, Acting P.J.

We concur: RAYE, J.
 MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, SEPTEMBER 29, 1999 CONTINUED**

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Civil PETER J. CECCHIN (Not for Publication)
No. v.
C026313 R. J. BARMAN et al.

The judgment is affirmed.

RAYE, J.

Wee concur: NICHOLSON Acting P.J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030606 RICKIE LEE GRAVES

The judgment is affirmed.

Sims, Acting P.J.

We concur: SIMS, Acting P.J.
 RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029972 SALVADOR BECERRIL MEJIA

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
 RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C026676 EDWARD SANCHEZ

The Day's market burglary conviction (and sentence thereon) and the burglary special circumstance are vacated and remanded to allow the People to file a written demand for a new trial within 30 days of the issuance of the remittitur. If the superior court does not receive a timely demand, after the 30th day it shall dismiss the charge and allegation. The judgment otherwise is affirmed.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, SEPTEMBER 29, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C029674 KENNETH DEAN McKAY
The judgment is affirmed.
CALLAHAN, J.
We concur: SCOTLAND, P.J.
BLEASE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030618 RUSSELL ALAN SMITH
The judgment is affirmed.
CALLAHAN, J.
We concur: SCOTLAND, P.J.
BLEASE, J.

Civil REBECCA WYNN (Not for Publication)
No. v.
C030368 VILLAGE GREEN CORPORATION
The judgment is affirmed.
HULL, J.
We concur: SCOTLAND, P.J.
RAYE, J.

Civil GARY CERAGIOLI et al.
No. v.
C030208 WILLIAM PROCK et al.
The judgment is affirmed.
HULL, J.
We concur: DAVIS, J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030671 ESTEVAN MENDOZA-MORALES
The judgment is affirmed.
CALLAHAN, J.
We concur: SCOTLAND, P.J.
BLEASE, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, SEPTEMBER 29, 1999 CONTINUED**

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Civil JAKE AND JESS, INC. (Not for Publication)
No. v.
C026423 SANDERS AND NELSON, INC. et al.
Civil JAKE AND JESS, INC. et al.
No. v.
C027134 SANDERS AND NELSON, INC.

The judgment is affirmed except insofar as it denies Bardfield attorney fees and costs. The matter is remanded to the trial court for a determination of reasonable fees and costs. Bardfield shall recover her costs on appeal.

RAYE, J.

We concur: SIMS, Acting P.J.
 MORRISON, J.

Civil JOSEPH D. RACO, JR.
No. v.
C033125 TRACY UNIFIED SCHOOL DISTRICT et al.
BY THE COURT:

Pursuant to the written stipulation of counsel, the appeal filed on June 17, 1999, and the cross-appeal filed on July 7, 1999, are dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 19(b).)

In accordance with the written stipulation of counsel, the parties shall bear their own costs on appeal.

Dated: September 29, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, SEPTEMBER 30, 1999**

15

Civil DAVID B. COWARD
No. v.
C030954 STEVEN R. BERTINO et al.
BY THE COURT:

The joint motion for stipulated reversal of judgment in the above-entitled matter is granted. The appeal filed on October 26, 1998, is dismissed only as to the Bertino defendants. This order does not affect the remainder of the appeal against respondents New England Life Insurance Company et al. It is ordered that the remittitur shall issue forthwith and that the parties shall bear their own costs on appeal. (See California Rules of Court, rule 19(b) and 26(a).)

Appellant's reply brief is to be served and filed on or before October 20, 1999.

It is furthered ordered that the motion by respondents New England Life Insurance et al. to strike portions of appellant's opening brief be denied.

Dated: September 30, 1999

BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C031987 BRYANT MICHAEL FLOWERS
The judgment is affirmed.

SCOTLAND, P.J.

We concur: MORRISON, J.
HULL, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C031836 ROLLIEGH EUGENE HIX
The judgment is affirmed.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
HULL, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, SEPTEMBER 30, 1999 CONTINUED**

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Civil GEORGE E. HALL, JR.
No. v. (Not for Publication)
C024829 PACIFIC ACCESS COMPUTERS et al.

The judgment is affirmed. Defendants' request for sanction is denied. Plaintiff shall reimburse defendants for their costs on appeal. (Cal. Rules of Court, rule 26(a).)

SCOTLAND, P.J.

We concur: SIMS, J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030414 CHRISTOPHER JAMES MOLES

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.
 RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029982 YUSUF ABDUL-WALI

The judgment is affirmed.

SCOTLAND, P.J.

We concur: SIMS, J.
 CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, SEPTEMBER 30, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C030843 SUPERIOR COURT, SAN JOAQUIN COUNTY
ANDRE BRADFORD

Crim. THE PEOPLE
No. v.
C030844 SUPERIOR COURT, SANJOAQUIN COUNTY
JOSE AZUA

Let a peremptory writ of mandate issue directing respondent superior court to (1) vacate its orders of October 13, 1998, which granted Bradford's and Azua's motions to dismiss the People's petitions for commitment under the Act, and (2) conduct further proceedings consistent with this opinion concerning the additional arguments raised in the motions to dismiss. Having served its purpose, the alternative writ is discharged. Upon finality of our decision, the stays previously issued by this court are vacated.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
KOLKEY, J.

Juvenile In re EDDIE W. et al., Persons Coming Under the Juvenile Court Law.
No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C031586 CHRISTINA R. et al.
EDDIE W. and CHRISTOPHER B.

The order denying the application by the minors for a rehearing is affirmed.

DAVIS, J.

We concur: BLEASE, Acting P.J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030919 JACKIE LYNN TWITTY

The judgment is affirmed.

SCOTLAND, P.J.

We concur: SIMS, J.
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, SEPTEMBER 30, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C031110 DOMINIQUE ANGERMARIE WHITE
The judgment is affirmed.
SCOTLAND, P.J.
We concur: NICHOLSIN, J.
HULL, J.

Civil RAYMOND FULTON (Not for Publication)
No. v.
C027732 CALIFORNIA AIR RESOURCES BOARD
The judgment is affirmed.
CALLAHAN, J.
We concur: BLEASE, Acting P.J.
KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C022388 MARK DAJON FOLEY, RAYMOND EDWARD GLADDEN
Crim. THE PEOPLE
No. v.
C022361 PATRICK FRANCIS CUMMINGS
The judgment is affirmed.
RAYE, J.
We concur: SIMS, Acting P.J.
DAVIS, J.

Civil ROBERT CHENEY, JR., a Minor, etc. et al.
No. v.
C030307 JACK BROWN
The judgment is affirmed.
NICHOLSON, J.
We concur: DAVIS, Acting P.J.
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, SEPTEMBER 30, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C031765 TROY MITCHELL BARRY

The judgment is affirmed.

NICHOLSON, Acting P.J.

We concur: MORRISON, J.
CALLAHAN, J.

Civil WILLIAM E. BRILL III
No. v.
C030082 CAPITAL LUMBER COMPANY

The judgment is affirmed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.
CALLAHAN, J.

FRIDAY, OCTOBER 1, 1999

Civil ANNA JORDAN et al. (Certified for Publication)
No. v.
C028340 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES et al.

The judgment is reversed with respect to the order that defendants enter claim for refund on behalf of those who pay the motor vehicle smog fee after the date the judgment is entered and notify such persons that this system for refunds is in place. The judgment is also reversed with respect to the order that defendants review their records and file individual claims for refund or set up and file a class action refund claim on behalf on all those who paid the motor vehicle smog impact fee on or after September 19, 1992, but prior to entry of judgment. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal.

MORRISON, J.

We concur: SIMS, Acting P.J.
NICHOSLON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
FRIDAY, OCTOBER 1, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)

No. v.

C031994 JOEL EDWARD BOYSZA, JR.

The judgment is affirmed.

SCOTLAND, P.J.

We concur: NICHOLSON, J.
HULL, J.

Civil TERRY EVERSOLE (Not for Publication)

No. v.

C030724 MARC TWYMAN

The judgment is affirmed. Plaintiff shall receive his costs on appeal.

SIMS, Acting P.J.

We concur: DAVIS, J.
RAYE, J.